

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at KNOXVILLE

BRANCH BANKING AND TRUST CO.,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 3:16-cv-555
v.)	
)	Judge Mattice
KIRKLAND CONSTRUCTION)	
CO., LLC, <i>et al.</i> ,)	Magistrate Judge Shirley
)	
<i>Defendants.</i>)	
)	

ORDER

Federal Rule of Civil Procedure 4(m) provides, in pertinent part:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

More than 90 days have now passed since the Complaint was filed, and there is no evidence in the record to suggest that Plaintiff has timely served Defendant Teresa C. Kirkland. Accordingly, Plaintiff is hereby **ORDERED to show case in writing, on or before March 1, 2017**, why its claims against Defendant Teresa C. Kirkland should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

Moreover, Federal Rule of Civil Procedure 55(a) provides as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

The Complaint in this action (Doc. 1) was filed on September 13, 2016. On January 26, 2017, Plaintiff filed proof of service as to Defendants Kirkland Construction

Company, LLC and Johnny R. Kirkland, (Docs. 3, 4), indicating that these Defendants were served on December 29, 2016.

Neither Kirkland Construction Company, LLC nor Johnny R. Kirkland have filed a responsive pleading or otherwise sought to extend the time in which to file a responsive pleading, as provided in Eastern District of Tennessee Local Rule 12.1. *See* Fed. R. Civ. P. 12(a)(1) (providing 21 days in which to file a responsive pleading). Despite Defendants' failure to file a responsive pleading, Plaintiff has yet to request that the Clerk enter default or move for a default judgment pursuant to Federal Rule of Civil Procedure 55.

Accordingly, Plaintiff is **ORDERED to show case in writing, on or before March 1, 2017** why its claims against Defendants Kirkland Construction Company, LLC and Johnny R. Kirkland should not be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. Plaintiff is hereby put **ON NOTICE** that if it does not timely file a response showing good cause, its claims against the non-responsive Defendants may be dismissed.

SO ORDERED this 15th day of February, 2017.

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE